

Bureau of Accounts
Informational Guideline Release (IGR) No. 98-101
February 1998

(Supersedes 90-103)

WETLANDS PROTECTION FUND

**Chapter 43 §218 of the Acts of 1997
(Amending G. L. Ch. 131 §40)**

This Informational Guideline Release informs local officials that an appropriation is no longer needed before fees deposited in the Wetlands Protection Fund may be spent by the conservation commission.

Topical Index Key:

Fees and Charges
Special Funds

Distribution:

Accountants/Auditors
Treasurers
Mayors/Selectmen
City Solicitors/Town Counsels

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**Chapter 43 §218 of the Acts of 1997
(Amending G. L. Ch. 131 §40)**

SUMMARY:

This legislation allows wetlands protections filing fees received by a city or town to be spent by the conservation commission without the necessity of an appropriation by the local appropriating body.

Under G.L. Ch. 131 §40, the Wetlands Protection Act, persons filing notices of intent to conduct certain activities on wetlands must pay a filing fee, a portion of which is paid to the city or town and the balance to the state Department of Environmental Protection (DEP). The fees are intended to help defray state and local administrative costs in connection with the Act, *i.e.*, to provide DEP and local conservation commissions with resources to complete project reviews and issue regulatory decisions within the Act's required time periods.

Before this legislation, an appropriation by the municipality's appropriating body was required before the conservation commission could spend any wetlands filing fees. The commission may now spend these fees without appropriation, but only with the written approval of the mayor, city manager in Plan E cities, the selectmen or town manager in towns adopting a town manager form of government. Expenditures are still restricted to those related to the administration and enforcement of the Wetlands Protection Act. This change applies to all unappropriated wetlands filing fees currently held by the municipality, as well as fees collected in the future.

GUIDELINES:

A. WETLANDS FILING FEES

1. Persons filing notices of intent to conduct various activities on wetlands pay a fee based on the type of project being proposed. This sliding scale fee structure is established by the Secretary of Administration and Finance. 801 Code of Massachusetts Regulations (CMR) 4.02(310).
2. The first \$25 of the applicable fee belongs to the city or town and the balance is split equally between the community and the state. For example, if the applicable filing fee is \$75, the amount due the city or town is \$50 (\$25 plus ½ of \$50) and the amount due the state is \$25.
3. The applicant makes payment of the state portion of the fee directly to the Department of Environmental Protection (DEP) and pays the balance to the city or town. The specific procedures and instructions for making these payments are found in regulations promulgated by DEP. 310 CMR 10.03(7).

B. ACCOUNTING PROCEDURES

1. The conservation commission must turn over to the treasurer all wetlands filing fees received. The fees should be paid over as soon as possible, but at least weekly, accompanied by a report on the turnover. A copy of the report must also be forwarded to the town accountant or city auditor.
2. The town accountant or city auditor must credit all wetlands filing fees received by the conservation commission and paid to the treasurer to the Wetlands Protection Fund. No other revenue, including regulatory fines and penalties imposed by the conservation commission, is to be credited to the fund. Any interest earned on the fund belongs to the general fund.

3. At the beginning of the fiscal year, and on a periodic basis thereafter, the town accountant or city auditor should certify to the conservation commission the accumulated amount in the Wetlands Protection Fund available for expenditure. Before making the certification, the accountant or auditor should determine from the conservation commission whether there are any pending fee disputes. If a fee is in dispute, the amount of any potential refund should be reserved and not be spent until the dispute is resolved. If a refund is required, the amount of the refund should be charged to the revolving fund. **See Section D below on refunds.**

C. USE OF WETLAND FEES

1. The conservation commission may spend, without appropriation, unreserved monies in the Wetlands Protection Fund with the written approval of the mayor, city manager in Plan E cities, the selectmen or town manager in towns adopting a town manager form of government.

This approval of spending authority may be broadly granted, such as for the kinds or amounts of expenditures the commission may make from the fund. Approval could be given to the commission's proposed spending plan for the fiscal year, for example. The commission could then spend unreserved monies in the revolving fund consistent with that plan. Further approval of the mayor, city manager, selectmen or town manager during the year would only be needed for other proposed spending from the fund.

2. Monies in the Wetlands Protection Fund may only be used to carry out the conservation commission's duties under the Wetlands Protection Act, not for other commission activities.

- a. Allowable expenditures. Any expenditure directly related to the administration and enforcement of the Wetlands Protection Act may be paid from the revolving fund. Examples would be the cost of engaging consultant and technical assistance to review proposed projects, or administrative or clerical expenses associated with processing notices of intent or regulatory decisions.

Monies in the revolving fund may also be used to pay salaries of regular employees to the extent attributable to wetland protection act activities. For example, if approximately 50% of the yearly activities of a clerical employee relate to wetlands protection, then 50% of the employee's salary could be paid out of the fund, along with the same proportion of the cost of any fringe benefits associated with the employment. Salaries can be paid from the fund in one of the following ways:

- (1) Budget offset. With the approval of the conservation commission, the appropriating body may appropriate an amount to offset the conservation commission's annual budget from the accumulated unreserved monies in the revolving fund. The amount could not exceed that portion of the salaries attributable to wetlands protection activities that are included in the total conservation commission appropriated budget for the fiscal year. This is the recommended approach and is

such purposes, except for the requirement of conservation commission approval.

However, where the conservation commission agrees to a budget offset, but insufficient unreserved monies have accumulated to fund an appropriation, the offset may be made by an inter-fund transfer at the end of the fiscal year instead. The full salaries would still be included in the conservation commission's appropriated budget and charged to the general fund during the year. Then at year's end, the accountant or auditor would transfer to the revolving fund salary expenses in the amount of the agreed upon offset, or the unreserved fund balance if less.

It is recommended that the offset amount be fixed by the appropriating body when approving the conservation commission's budget. Alternatively, the commission may agree by vote to a specific offset amount.

- (2) Split funding. Alternatively, communities may elect to appropriate only that portion of the employees' salaries not payable from the revolving fund. In that case, however, the positions would not be considered funded for the fiscal year unless, on July 1, or at the time of hire if during the year, there were sufficient unreserved monies accumulated and available in the fund to cover the rest of the salaries for the year. At the beginning of the fiscal year, or time of hire, the town accountant or city auditor should encumber the fund for the amount needed to fully pay the salaries.
 - (3) Full funding. In cases where an employee's activities relate solely to wetlands protection, the full salary, along with fringe benefits associated with employment, may be paid directly from the revolving fund. Again, however, the position would not be considered funded for the fiscal year unless, on July 1, or at the time of hire if during the year, there were sufficient unreserved monies accumulated and available in the fund to cover the entire salary for the year. At the beginning of the fiscal year, or time of hire, the town accountant or city auditor should encumber the fund for the amount needed to fully pay the salary.
 - b. Non-allowable expenditures. Examples of expenditures that could not be charged to the revolving fund are attorney's fees for drafting conservation by-laws, the conservation commission's membership dues to a statewide organization, subscriptions, conferences and other general travel expenses. These expenditures are not directly related to the administration or enforcement of the Wetlands Protection Act, but rather relate to the operation of the conservation commission generally.
3. Payment of bills or payrolls being charged to the revolving fund must follow the normal warrant process used for other municipal expenditures.

D. REFUND OF DISPUTED FEES

1. Under the payment procedures established by DEP regulations, the applicant may dispute the amount of the fee the conservation commission determines is applicable to the proposed project. If the fee dispute is resolved in favor of the applicant, the applicant is entitled to a refund of the incorrect amount. One half of the refund is to be paid by the city or town and the other half by DEP.

2. If a refund is due, the conservation commission should prepare a voucher and submit the voucher, with appropriate supporting documentation, to the town accountant or city auditor for placement on the treasury warrant. A copy of the DEP decision would be sufficient documentation. Upon approval of the warrant, the treasurer will issue the refund to the applicant.